UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIFFANY (NJ) INC. and TIFFANY AND COMPANY, Plaintiffs, v. eBAY INC., Defendants.	Case No. 04 Civ. 4607 (KMK)

DECLARATION OF JAMES B. SWIRE IN SUPPORT OF PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE THE PROPOSED EXPERT TESTIMONY OF GEORGE MANTIS

I, James B. Swire, declare as follows:

1. I am a partner with the firm Arnold & Porter LLP, counsel for Plaintiffs in the above-referenced action. I am admitted to practice before this Court.

2. I submit this Declaration in support of Tiffany's Memorandum of Law in Opposition to Defendant's Motion in Limine to Exclude the Proposed Expert Testimony of George Mantis.

3. Annexed hereto as Exhibit 1 is a true and accurate copy of portions of the deposition transcript of George Mantis, dated February 10, 2006.

4. I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 20, 2006
New York, New York

James B. Swire

EXHIBIT 1

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - -x

TIFFANY (NJ) INC. and TIFFANY AND COMPANY,

Plaintiffs,

-against-

04 Civ. 4607(KMK)

eBAY INC.,

Defendant.

- - - - - - - - - - - - - - - - -x

DEPOSITION of GEORGE MANTIS, taken by Defendant, at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York, pursuant to Notice, on February 10, 2006, commencing at 9:36 a.m., before Jeffrey Benz, a Certified Realtime Reporter and Notary Public within and for the State of New York.

GEORGE MANTIS,

called as a witness, having been first duly sworn by Jeffrey Benz, a Notary Public within and for the State of New York, was examined and testified as follows:

EXAMINATION BY MS. SINGER:

Q. Mr. Mantis, could you please state your name and address for the record.

A. George Mantis, M-A-N-T-I-S; 2032 North Kenmore, Chicago 60614.

Q. Have you ever been deposed before, Mr. Mantis?

A. Yes.

Q. How many times have you been deposed?

A. In excess of a hundred.

Q. Okay. So you're probably very familiar with the ground rules, but we'll go over them just in case. All of your answers have to be verbal so that the court reporter can take them down. If you don't understand a question, please let me know, and I'll rephrase it. But if you answer the question, then I'm going to assume that you understood it. Is that okay?

Mantis

A. Yes.

Q. If you need a break, let me know and we can take one.

What did you do today to -- what did you do to prepare for today's deposition?

A. I reread the buying protocol that I developed, and the expert report that I prepared, as well as rereading Mary Grasso's deposition.

Q. Anything else?

A. I met with counsel yesterday.

Q. Approximately how long was that?

A. Approximately an hour and 15 minutes.

Q. Did you look at any documents during the course of that meeting?

A. The expert report, the buying protocol, specifically, yes.

Q. And what did you discuss yesterday during that meeting?

A. We basically went through the report and the buying protocol.

Q. In your prior depositions, were you deposed always as an expert, or were any as in a personal capacity?

A. An expert.

Mantis

Q. What was the nature of your expert retention?

MR. SWIRE: Open-ended? He testified over a hundred times.

Q. As a -- were you -- when you have -- have you ever been retained as a statistician before?

A. Every report has an observation that has a statistical meaning. So in part, every report rendered in survey research involves some aspect of statistics.

Q. Have -- when you said you testified over a hundred times, or you were deposed over a hundred times, it was a hundred different cases, or more than once in a particular case?

A. More than once, when you consider deposition and trial testimony.

Q. So approximately how many different matters have you been retained in?

A. Specifically for litigation, or throughout my entire career?

Q. Specifically for litigation.

A. This is a rough estimate. Approximately about 300.

Mantis

Q. And were you retained as a consumer survey expert, in all of those --

A. A survey research expert.

Q. Survey research expert.

Let's briefly go through your education. Did you receive an undergraduate degree?

A. Yes.

Q. And where was that from?

A. Carroll College.

Q. What year was that?

A. 1965.

Q. Did you do any postgraduate work?

A. Yes.

Q. Could you describe that briefly for me, please.

A. I received an MBA from Indiana University in 1967.

Q. Anything else?

A. I also had a juris doctorate degree from Illinois University of Technology, Chicago Kent College of Law, received in 1974.

Q. Did you ever practice as an attorney?

A. No.

Q. Are you admitted to the bars of any

Mantis

state?

A. Yes.

Q. What states?

A. Illinois.

Q. Have you done any other postgraduate work besides your J.D. and your MBA?

A. I've taken courses on occasion in the intellectual property program at John Marshall Law School in Chicago.

Q. When was that?

A. I don't recall the exact dates. It was over a period of years. 19 -- the mid to late 1970s.

Q. Have you taken any courses since those courses at John Marshall?

A. No.

Q. Have you ever taken any courses specifically in statistics?

A. No.

Q. Have you ever taken any courses on statistical methods of sampling?

A. Offered by a university, or -- it's pretty broad.

Q. Well, let's start with by a university.

Offered by a university.

A. No.

Q. Have you ever taken courses offered by any other institution?

A. By institution, that would include a corporate setting, where protocols are developed by an organization and implemented, in either experimental designs or ordinary commercial designs. Also, courses that from time to time are offered by various associations that are involved in marketing. Those are all available to survey researchers. And as I recall, throughout my 30 some odd years of undertaking survey research, I've taken such courses.

Q. Are such courses -- do they generally last more than a week, would you say?

A. Well, some of them are ongoing. In the corporate setting, they're obviously ongoing. Others are of the seminar variety, a day or two.

Q. Approximately how many of those courses have you taken?

A. That I don't recall.

Q. Do you think it's more than ten?

A. Probably not.

Mantis

Q. Do you think it's more than five?

A. I can't place a number on it. This goes back into 30 years of history.

Q. Okay. Mr. Mantis, are you a member of any professional societies?

A. Yes.

Q. What societies are you a member of?

A. The International Trademark Association.

Q. Any others?

A. No.

Q. Do you have any other professional certifications or licenses?

A. No.

Q. If you could briefly describe for me your employment history before you formed the Mantis Group.

A. Including the military, in from 1967 to 1969, I was a member of the United States Army, an officer in the United States Army.

From 1969 to 1978, I was a member of the staff of Continental Illinois National Bank and Trust Company as a marketing officer, involved in marketing research.

From 1978 to 1985, I was a vice

president of Market Facts, Incorporated, a large publicly held marketing research firm.

In 1985, I formed my own company.

Q. And what is your role at the Mantis Group?

A. I am the Mantis Group.

Q. Does the Mantis Group have any other employees?

A. No.

Q. Has the Mantis Group ever had any other employees?

A. Yes.

Q. And what kind of employees did you have?

A. I employed an individual that was highly experienced in field operations, specifically data collection activities.

Q. And when did this person's employment at the Mantis Group cease?

A. Upon her retirement, and a decision not to work anymore, I believe -- approximately six or seven years ago.

Q. So am I correct, then, that that person would have had no role in your assignment for Tiffany?

Mantis

A. Correct.

Q. Aside from you personally, did any -- did you have any assistance in -- withdrawn.

You mentioned you were the vice president at Market Facts, and that it was a marketing research company.

A. Yes.

Q. What was your role at Market Facts?

A. I served in two capacities, in the capacities defined by the marketplace to which research services were provided, those segments being the financial services industry and also surveys provided to organizations that involved potentially litigation. For example, Lanham, L-A-N-H-A-M, Act cases.

Q. What were your duties as a vice president?

A. Vice presidents had as their primary responsibility to respond to client requests or -- and/or bring to clients the expertise they had, that they possessed, what services could be provided to them; a consultancy capacity as well as a sales capacity. And as part of the consultancy capacity, the responsibility including the design of surveys. And, of course, the reporting of the results.

Q. What -- how would you describe the core business of the Mantis Group?

A. Today?

Q. Today.

A. Well, I described the Mantis Group as a survey research firm that is involved predominantly in surveys in support of litigation.

Q. Has that consistently been the core since you founded the Mantis Group in 1965?

A. No.

Q. How is that different today?

A. Less emphasis on commercial marketing research than when the company was founded.

Q. Have you ever conducted any consumer surveys on users of Internet service providers?

MR. SWIRE: Objection to form.

A. You would have to restate. I'm confused as well.

Q. Let's back up, then. How does the Mantis Group generally conduct its consumer surveys?

A. Depends on the issue, the hypothesis

Mantis

that it's testing.

Q. Can you give me some examples.

I'm --

A. You're going to have to limit your question, counsel.

Q. I'm sorry, let me focus you on specifically not -- specifically how the survey is carried out. Do you usually do mall intercept surveys? Do you usually do Internet surveys? What --

A. There's no typicality. There's no usual. Everything is issue and client sensitive. You design a survey that best provides information to address the hypothesis that you're asked to test.

Q. Have you ever conducted any surveys using the Internet as a way to gather the information?

A. Yes.

Q. Approximately how many times have you done that?

A. Very infrequent, I would think. Perhaps two or three times.

Q. Can you tell me more about those two or three times.

A. No, I can't. They're work product.

Q. Okay. What is your experience in statistical sampling?

A. Being involved over the course of decades, now, in developing sampling plans for every study that I've ever designed.

It's an integral part of study design.

Q. Do you have -- have you ever published any articles in the marketing or consumer survey area?

A. No.

Q. Have you ever spoken at any seminars or any kind of other courses on consumer survey research or -- or statistics?

A. Yes.

Q. When was that?

A. Over the course of the last several years, I've spoken at the international meeting of the International Trademark Association. I've spoken at least a couple of times at the Midwest Symposium on Intellectual Property. I've spoken to members of the Chicago Bar Association. Marketing Research Association. And from time to

Mantis

time, I lecture at John Marshall Law School in a graduate course on trademarks, specifically the use of surveys in Lanham Act cases.

Q. I'm sorry, it was John Marshall Law School?

A. Yeah, John Marshall Law School.

Q. Were you ever -- aside from your retention in this case against eBay, have you ever represented Tiffany or been retained by Tiffany in the past?

A. No.

Q. Have you ever provided -- have you been retained as an expert witness by either Dorsey & Whitney or Arnold & Porter?

A. Yes.

Q. Was that Dorsey & Whitney?

A. Both.

Q. Both. And how many occasions was that?

A. Dorsey & Whitney, I would say, going back over the course of the first time, it would be 20 years ago, perhaps five. For Arnold & Porter, there's been one additional occasion.

Q. Let's start with Arnold & Porter. What -- are you able to give me the cases in which you were retained?

A. It's cited in my expert report.

Q. Which case was that?

A. Jamster and Jamdat.

Q. Are the Dorsey & Whitney cases also cited in your expert report?

A. I would have to look, counsel. I believe some are.

Q. Well, we'll look at your report in a minute.

Did you testify in the case, in the Jamster case?

A. Case settled.

Q. Did -- have you ever testified in any of the cases for which you were retained by Dorsey & Whitney?

A. Yes.

Q. How many occasions was that?

A. By testify, you mean in court?

Q. Yes.

A. I recall two cases.

There may be more, but I recall two.

Q. That's fine. Did you conduct consumer surveys in those cases?

Mantis

A. Yes.

Q. In both of them?

A. Yes.

Q. Were those consumer surveys submitted to the court?

A. Yes.

Q. Were you qualified as an expert by the court in those cases?

A. Yes.

Q. Has there ever been an occasion in which you were proffered as an expert and have not been accepted as such by the court?

A. No.

Q. What's your usual rate for conducting a consumer survey?

MR. SWIRE: Objection to form.

A. Well, it depends on the survey. The surveys are presented to clients on a project basis, so the costs are predicated on the scope of the survey.

Q. What is the average range of fees, ballpark fees, that the Mantis Group would charge a client? I understand it's project specific.

MR. SWIRE: Object to form.

reasonable sample size?

A. Yes.

Q. What if only 100 items had been purchased? Do you think 100 items would have been a reasonable sample size?

A. Yes.

Q. What about 80 items? Would that have been a reasonable sample size?

A. Well, you would have to compute sampling error for each one of the examples that you were given. If the observed proportion remained relatively the same, or even -- was even lower, let's say a 50/50 split of the data, 100 would be reasonable. Sampling error is not going to increase substantially.

So you would compute sampling error to see what level of precision reliability you would like to look at with regard to the proportion that you're measuring.

Q. Would you have designed a protocol that had a sample size of 150 in this case?

A. I could have, yes. I could have suggested that as well as 200.

Q. But would you have?

Mantis

A. I didn't. Would I? I don't know. Is it sufficient? That's the salient question. The answer is yes.

Q. Now, you said, I think you before the break told me that you completely relied on Tiffany's evaluation to determine what was counterfeit or not, correct?

A. Correct.

MS. SINGER: Please mark that as Mantis 2.

(First buying program spreadsheet was marked Mantis Exhibit 2 for identification, as of this date.)

Q. The court reporter has handed you what's been marked as Mantis Exhibit 2. Do you recognize this document?

And I know that it's very hard to read.

A. It's almost impossible, but yes, I recognize it.

Q. What is Mantis Exhibit 2?

A. This appears to be the spreadsheet based on the evaluation resulting from the first buying program.

Q. Do you see in the top right-hand corner

ACKNOWLEDGMENT

STATE OF NEW YORK)
) Ss.:
COUNTY OF NEW YORK)

I, GEORGE MANTIS, hereby certify, I have read the transcript of my testimony taken under oath in my deposition of February 10, 2006; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

George Mantis
GEORGE MANTIS

Subscribed and sworn to
before me on this 4th day
of May, 2006.

Urszula Malinowski
NOTARY PUBLIC

"OFFICIAL SEAL"
URSZULA MALINOWSKI
Notary Public, State of Illinois
My Commission Expires April 30, 2008

CERTIFICATE OF SERVICE

I, Erik C. Walsh, the undersigned attorney at law duly admitted to practice in the State of New York, respectfully show that on the 20th day of November, 2006, I caused the annexed **PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE THE PROPOSED EXPERT TESTIMONY OF GEORGE MANTIS** and **DECLARATION OF JAMES B. SWIRE IN SUPPORT OF PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE THE PROPOSED EXPERT TESTIMONY OF GEORGE MANTIS** to be served via electronic mail and Federal Express upon:

Randi Singer, Esq.
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8152

Erik C. Walsh